

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-305-C - ORDER NO. 91-263
APRIL 8, 1991

IN RE: Proceeding to Consider Allowing)	
Local and IntraLATA 0+ Collect)	ORDER DENYING
Authority for COCOT Providers)	PETITION FOR REHEARING
Serving Confinement Facilities)	AND/OR RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and/or Reconsideration duly filed on behalf of Southern Bell Telephone and Telegraph Company (Southern Bell) in the above-referenced matter. Southern Bell seeks Rehearing or Reconsideration of Order No. 91-122, issued by the Commission in the instant docket on March 4, 1991. Southern Bell alleges several errors on the part of the Commission in Order No. 91-122. The Commission herein denies the Petition for Rehearing and/or Reconsideration filed by Southern Bell for the following reasons:

1. Southern Bell alleges that the Commission erred by failing to address each of its proposed Findings of Facts submitted by Southern Bell, and therefore, the Order is deficient and violates S. C. Code Ann., §1-23-350 (1976). Section 1-23-350 provides in pertinent part that "[i]f, in accordance with agency rules, a party submitted proposed findings of fact, the decision

shall include a ruling upon each proposed finding." However, in this matter, by memorandum dated December 14, 1990, the parties were informed that a motion was made at the conclusion of the hearing that "briefs" be allowed to be filed by the parties in this matter. The Commission determined that "briefs" shall be due no later than January 9, 1991. Southern Bell may not be allowed to hold the Commission to a higher standard in addressing its "Proposed Findings of Fact" merely by labeling its brief as such. The Commission requested briefs be filed; Southern Bell filed what it labeled "Proposed Findings of Fact." Because the Commission requested briefs be filed, it is not required to address any so-called Proposed Findings of Fact filed by a party.

2. Southern Bell alleges the Commission erred by failing to require an accounting of the Applicants' operations prior to certification and that the Order and actions of the Commission violate S.C. Code Ann., §§58-3-140 and 58-9-280 (1976). This proceeding has been ongoing before the Commission since February 26, 1990. Before the hearing that resulted in Order No. 91-122, the Commission held another proceeding on June 6, 1990, which determined that the Applicants herein lacked the proper authority to provide the services they proposed. Commission Order No. 90-663, recognizes that the Applicants were providing service to certain confinement facilities under a misunderstanding of their authority. Order No. 90-663 denied Southern Bell's motion to require Pay-Tel and Coin Telephone to cease and desist from providing telecommunications services in South Carolina until the

matter of authority was resolved. The Commission found that it was not in the public interest to disrupt service to the confinement facilities presently being served. The Commission did require Pay-Tel and Coin Telephone to cease and desist from marketing their services and from providing any new services in other confinement facilities until this matter was resolved. In Order No. 91-122, the Commission found that in light of its grant of authority, that Southern Bell's motion to require Pay-Tel and Coin Telephone to cease and desist should be denied and that the motion for an accounting of any revenues derived should be denied.

Section 58-3-140 gives the Commission the power and jurisdiction to "supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed or observed and followed by every utility in this State." Additionally, §58-9-280 requires a telephone utility to obtain from the Commission a Certificate of Public Convenience and Necessity before beginning the construction or operation of any telephone utility plan or system or any extension thereof. Nowhere in either section does it require an "accounting" of the Applicants operations. Southern Bell's reliance on these Code sections are inapplicable to its allegation of error and the Commission's decision not to require an accounting is within its discretion. The Commission took the appropriate action and did not abuse its discretion in this regard.

3. Southern Bell alleges that the Commission's failure to require the filing of financial data, which is required by R.103-834 of the Commission's Rules of Practice and Procedure, has violated its own procedures and has denied Southern Bell due process and equal protection of the laws of this State of the United States. In its Petition, Southern Bell recognizes that the Regulation refers to applications. Southern Bell also recognizes that in this matter and the history of this proceeding is such that the Applicants never filed an application. Southern Bell approaches its argument from many angles. First, Southern Bell submits that the financial information was never filed at the Commission. Then it states that the information was not presented as evidence in the December 12, 1990 hearing. Southern Bell is wrong in this regard. The financial information was filed on November 29, 1990. The financial information was not presented as evidence in the hearing because it was not required. As part of the "application", the matters of the financial information were part of the record in this case and did not need to be separately admitted as a hearing exhibit. Southern Bell then recognizes that the Applicants filed financial information on November 29, 1990. By filing the financial information on November 29, 1990, Southern Bell was afforded adequate opportunity through the Commission's discovery procedures to conduct discovery on the financial information if it so desired. Southern Bell did not do so. The Commission did not err by allowing the Applicants to submit financial data, and Southern Bell was not deprived of any of its

due process rights. Southern Bell could have conducted discovery if it desired to and could have asked for a waiver of the rules to shorten the response time by the Applicants in light of the late filed information. Southern Bell did not attempt to do so. The information filed by the Applicants was adequate for the Commission to make a determination as to the financial viability of the companies. It is in the Commission's discretion to determine what evidence it will rely on to make a determination as to fitness, willingness, and ability of an applicant to provide a proposed service. The Commission committed no error in this regard.

4. Southern Bell alleges that the Commission's Order is in excess of its statutory authority because the administrative findings, emphasis and conclusions are in violation of S.C. Code Ann., §1-23-380(g). However, Southern Bell does not make any specific allegations as to how the Commission's Order violates §1-23-380. The Commission is unable to respond in any particular fashion to this allegation since it is not specific.

5. Southern Bell alleges that the Commission's Order fails to set forth separately stated findings and conclusions of law sufficient to determine the basis of the decision of the Commission. Additionally, Southern Bell alleges error in the fact that the Commission made no references to the transcript of record in its Order. The Commission's Order is not an error as alleged by Southern Bell. In fact, the Commission's Order No. 91-122 contains four sections dealing with the issue of the grant of

authority to the Applicants. These sections contain 34 separately stated findings of fact, excluding sub-parts, and ten conclusions of law. Additionally, two other sections dealing with miscellaneous evidentiary rulings and conditions of certification contain nineteen findings and conclusions. The findings are based on the record before the Commission. There are adequate findings and conclusions in the Commission's Order to allow a reviewing Court to determine the basis of the Commission's decision in this matter. Moreover, there is absolutely no requirement that citation be made to the record; merely that there are facts in the record to support the Commission's decision.

6. Next, Southern Bell alleges that several findings of fact are not based on evidence of record or on matters officially noticed. Southern Bell alleges error in seven particulars. The Commission will address each matter of alleged error:

(a) Southern Bell alleges that Findings of Fact Nos. II.B, 5, 6, 7, 8, 9 and 10 are in error because there is no evidence that if sufficient numbers of LEC provided telephones were placed in the inmate confinement areas that these "advantages" would be realized. The allegation of Southern Bell misses the point. The findings of the Commission relating to the advantages of the Applicants' store and forward services demonstrates the differences between the way the confinement facilities had to conduct inmate calling before the Applicants' services were available compared to the ease and administrative efficiencies and economies by using the Applicants services. Additionally, one

major advantage was the alleviation, to a great extent, of inmate fraud. The findings also support the public convenience and necessity of this service. The administrators of the confinement facilities were pleased with the services and found them to be better than what they had previously used in the past. These findings are supported in the evidence and there was no evidence in the record to support any so-called advantages that might have accrued to the confinement facilities by the use of LEC provided telephones. The Commission's findings in this regard are supported by the evidence.

(b) Southern Bell alleges that Finding of Fact No. II.B. 11 is in error because there is no evidence of record that supports the Commission's finding that unless the Applicants are authorized to provide the requested services, including intraLATA and local services, similar services will not be available in South Carolina. Southern Bell is incorrect in this allegation. The record does support that "similar service" will not be available. Southern Bell has a service that is comparable to the services offered by the Applicants. However, it is not the same as the service of the Applicants. Order No. 91-122, in Finding II.B. 13 points out the differences in the AABS service offered by Southern Bell and the store and forward technology offered by the Applicants. Additionally, the record supports through the testimony of witness Presson that the store and forward product would not be as effective if the local and intraLATA calls were required to be handed off to the local exchange company. Southern

Bell is incorrect in stating that there is a finding by the Commission that the Applicants would not provide services to the confinement facilities unless they were allowed to carry local and intraLATA traffic. The finding of the Commission states that service would not be as effective if the local and intraLATA calls were required to be handed off and that similar services would not be available. Therefore, Southern Bell's assertion that the Commission relied on testimony relating to this so-called finding is in error. The Commission did not rely on such testimony and did not make a finding in that regard.

(c) Southern Bell alleges that Finding of Fact Nos. II.B. 12, 13 and 14 are in error because there is no evidence to support them. Again, Southern Bell misconstrues the evidence. There is testimony and evidence in the record that supports the Commission's findings in this regard. Southern Bell was the only LEC that opposed the store and forward technology services proposed by the Applicants. Southern Bell presented testimony that it provided a comparable service. No other LEC appeared but there was testimony concerning the Lexington County Detention Center and its operator services arrangement with Alltel. However, Alltel had a contractual arrangement with Southern Bell to provide operator services. There is no other testimony provided to the Commission concerning the provision of any similar operator services provided by any other LEC in South Carolina. Additionally, the testimony of witness Bost indicated that barring access to live operators reduces fraudulent calls. Witness Bost

testified to the problems experienced in the Lexington County Detention Center. The findings concerning the capabilities of Southern Bell's AABS system is contained in the record and the Commission's findings in that regard are not in error.

(d) Southern Bell alleges that Finding of Fact No. II.B.15 is in error because there is no evidence that the LECs would maintain sufficient revenues to retain the intraLATA revenue stream if the proposed services were approved. The Commission is of the opinion that the findings in regard to the revenues received by the LEC are correct and supported by the evidence of the record.

(e) Southern Bell alleges that Finding of Fact No. II.B.16 is in error because there is no evidence of any cost savings to the LEC should the service as proposed be approved. The Commission's finding in this regard is based on the Commission's taking notice of certain facts brought out during the hearing and of the Commission's notice of its own tariffs filed by the LECs. The Commission's finding in this regard is not one in which it placed reliance upon in drawing its conclusion that the Applicants had demonstrated a need for the service and that such authority should be granted the confinement facility providers.

(f) Southern Bell alleges that Finding of Fact No. II.B.17 is in error because there was no evidence that the store and forward telephones used by the Applicants would result in greater calling volumes than if the inmates were allowed equal access to telephones provided by the LEC and there was no evidence that

showed greater calling volumes if such were realized that would benefit the LEC. The testimony concerning the increased inmate access to the automated collect telephones was given by the jail administrators who testified before the Commission. All the testimony of the prison officials indicated that there was greater inmate access to the COCOT automated collect phones. The finding does not relate to a hypothetical situation that Southern Bell would propose which assumes that the same number of regular phones would be available or that unfettered inmate access be given to the traditional pay telephones in confinement facilities. Rather, the Commission's finding shows that with the store and forward collect only telephone of the Applicants, inmates were given greater access to use of the telephones creating greater calling volumes. The evidence supports the Commission's finding in this regard.

(g) Southern Bell alleges that Conclusions II.B.1 and 2 are in error because there is no evidence in the record which establishes a particular need for the Applicants services; that no other LEC or other entity offers similar services; that the LECs will benefit if the Applicants are authorized to provide the requested services; or that the Applicants have never filed any financial exhibits for tariffs with the Commission. The Commission's conclusions are based upon the findings made by the Commission which are supported by the evidence. The jail administrators provided the testimony relating to public need for the services and that greater calling volumes will be had by the

provision of this service. Additionally, the Commission has already addressed the appropriateness of the financial exhibits and tariffs filed by the Applicants. The Commission's conclusions comport with the requirements of the APA and are fully supported by the evidence.

7. Southern Bell alleges that the Order of the Commission violates S.C. Code Ann., §1-23-320(i)(1976) as applied by the South Carolina Supreme Court in Hamm v. Southern Bell Telephone and Telegraph Company, ___S.C.---, 394 S.E.2d 311, 313, (1990). Southern Bell contends that certain findings and/or conclusions are based on opinion testimony and the factual basis for such opinions were not introduced as evidence or as matters officially noticed. Specifically, Southern Bell alleges that Findings of Fact Nos. II.B. 7, 8, 9, 10, 14 (b), (c), (d), 15 and 16 are not based on any factual data of record. The Commission previously addressed similar concerns of Southern Bell in Order No. 90-1171, issued December 12, 1990, in the instant docket which ruled on certain Motions to Strike, filed by Southern Bell. A similar analysis is necessary here. As the Commission determined in Order No. 90-1171, Hamm, supra, concerns a study referred to during a Commission hearing but was never put into evidence. The expert's opinion in Hamm was therefore, not based on fact. In this instance, the testimonies of the witnesses supporting the findings of the Commission are based upon the experiences of the jail administrators' direct personal knowledge and experience as to the matters upon which they testified. Hamm, is not applicable to the

testimony of the jail administrators. The Applicants and their witnesses have shown the basis upon which the statements of their witnesses are predicated, both in the testimony itself and in the relevant interrogatory responses. The support for testimony need not consist of studies of written documentation, but may be made by any and all means permitted, including direct personal knowledge or experience. Southern Bell's allegations of error in this regard are erroneous.

8. Southern Bell alleges that Order No. 91-122 is in error in finding that the Applicants are interexchange carriers for interLATA and intraLATA purposes. Southern Bell contends that the term "interexchange" has been applied in the telecommunications industry to those services furnished between, and not within, LATA's. However, the Commission has defined what an interexchange carrier is. The Commission provided in Order No. 89-633, issued June 30, 1989, in Docket No. 88-445-C that an interexchange carrier is a carrier which carries long distance telecommunications traffic but does not provide local exchange service. Therefore, the Commission's finding that as to interLATA and intraLATA long distance purposes, the Applicants were interexchange carriers is correct and consistent with the Commission's previous findings. The Commission recognized in its Order that as to the provision of local service the Applicants, by definition, cannot be interexchange carriers. The findings of the Commission in Order No. 91-122 will require the Applicants to file the same information as any reseller or facility based long

distance carrier that is currently certified. The Applicants herein are not being treated any differently from any other interexchange carrier subject to the Commission's jurisdiction.

9. Southern Bell alleges that the Commission erred in not granting Southern Bell's Motion to Dismiss and Motion for a Directed Verdict. Additionally, Southern Bell alleges that the Commission erred in not granting its Motion to Strike and that the Commission's admission into evidence certain exhibits over Southern Bell's objections is in error. The allegation of Southern Bell concerning the Commission's ruling in regard to its motions and objection have been previously addressed in the Commission's Order. The Commission's rulings in this regard are discretionary and the basis for the Commission's rulings are provided in Order No. 91-122. The Commission did not abuse its discretion in denying Southern Bell's Motions, nor did it abuse its discretion in allowing the hearing exhibits objected to by Southern Bell into evidence.

After a full consideration of the allegations of error of Southern Bell, the Commission has determined that its Petition for Rehearing and/or Reconsideration should be, and hereby is denied. The Commission's Order No. 90-122 is fully supported in law, logic and fact and there is no justifiable reasons stated in Southern Bell's Petition to grant rehearing or reconsideration on any matters raised in the Petition.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)